

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Revision of Procedures Governing Amendments |) | MB Document No. 05-210 |
| To FM Table of Allotments and Changes |) | RM-10960 |
| Of Community of License in the Radio Broadcast |) | |
| Services |) | |

COMMENTS OF
SELLMEYER ENGINEERING

These comments have been prepared in response to the Commission's Public Notice of June 14, 2005 (FCC 05-120), soliciting comments on the above captioned matter. In this proceeding, we offer the following comments based on many years of experience divided between line operational responsibilities at radio stations, design of Radio Broadcasting Equipment for two major manufacturers and more than twenty five years representing Broadcast clients as a Consulting Engineer.

ELIMINATE THE TABLE OF ALLOTMENTS FOR FM STATIONS

We believe this proposal makes sense from the standpoint of reducing unnecessary steps and paperwork with its consequent dilution of the Commission's Staff resources. The present multistep process, composed of a Proposal for Rulemaking to amend the Table of Allotments followed by a Form 301 application for an existing station, or a Proposal for Rulemaking followed by a sometimes interminable wait for a filing window, and, in the case of a new allotment, again followed by a Form 301 application not only causes delays in new or improved service from many months to as long as a decade or more, but it wastes valuable Staff resources and invites manipulation of the allocation system. It also destroys the financial planning required to construct and operate a radio station in the Public Interest.

When the present Table of Assignments was adopted in 1963, it replaced a demand based allocation system, predicated on interference protection to existing and proposed stations not unlike the system used successfully in the "Standard Broadcast Band", the medium wave AM band, for many decades. The system adopted loosely resembled an interference based system, albeit based on presumed distances to interfering contours and relying on site to site spacings based on the then three classes of stations, A, B and C. This simplified the allocation process by eliminating the

need to manually calculate the average terrain for each radial, a very time and labor intensive operation. With only three classes of stations and fewer than 2000 total stations, this was a relatively simple and usually reliable means of determining if a station could be assigned to a given city of license. The system was probably justified by minimizing the workload on the Engineers by making a simple spacing calculation which required much less time than analyzing potential interference to and from other existing and proposed facilities. Due to the relatively uncrowded band at the time, it worked fairly well and usually did not result in serious interference to many stations. Unfortunately this is no longer the case.

With the advent of Docket 80-90, sub classes of stations were added, each with a new set of spacing tables for intermediate classes between class A and class B and class A and class C stations with the addition of class C1 and class C2 facilities. Later, class C3, 6 kilowatt class A stations and now class C0 facilities. This will be a never ending situation ending in class C1,000,000.43 before it is over. This, combined with Section 73.215 of the Rules, makes it a challenge to amend the Table of Assignments in many cases and to avoid errors in such amendments due to “noise” in the Commission’s FM database. Many proposed and hypothetical allotment proposals remain in the database for years following resolution of the underlying docket proceeding. It is often difficult to determine which of the proposals is valid and which are invalid. **In practice we have a de facto interference based allotment system without the benefits of interference protection.**

We submit that, with the advent of modern computers and computer algorithms which accurately emulate the Commission’s F:50,50 and F:50,10 curves and readily available terrain databases and the FM Database, the Table of allotments and the administrative nightmare which accompanies it has outlived technology and should be eliminated. **The FM Allotment Process should be returned to an interference protection centered, demand based system.** The system could be easily administered using properly written computer programs operated on a network based system existing in the Audio Services Branch. Most, if not all, of the programs already exist in the Branch. All classes and sub classes of FM stations could be eliminated with no significant effects. The proliferation of subclasses has effectively blurred the distinctions between all but the highest and lowest classes.

An example of how the system would work is shown below:

1: An applicant determines that channel 234 will work at Pneumonia Flatts, Nevada from a certain site with 68 kilowatts ERP from a height above average terrain of 397 meters. With these facilities the proposal will cause no prohibited interference to any existing or proposed station.

2: The applicant files a Form 301 application with the appropriate exhibits showing the proposed coverage and interfering contours to all relevant stations listed in the current CDBS database along with the appropriate tabulations of average elevations and distances to contours. The applicant pays the relevant fees for a new station according to a formula based on population served or other measurement related to the potential financial rewards.

3: The Form 301 application is entered in the FM database with an effective date of the date of receipt of the application and fees.

4: The application is screened for accuracy and interference considerations and for conflict with other previously filed applications. The proposal is easily evaluated with existing software by plotting the service and interfering contours from all relevant stations and applications in the FM Database. If no faults are found and no conflicts exist as of the date of filing, the application is then screened for legal compliance.

5: If the application is found to be grantable on the basis of the step 4 screening, it is placed on Public Notice for the required period of time.

6: **If no conflicting applications are received by the cut off date, the application is granted.** If one or more conflicting applications are filed and pass the step 4 screening process, the applications are consolidated and placed on a closed auction limited to the applicant pool of the mutually exclusive group. The winning bidder is awarded the construction permit based on his previously filed Form 301 application.

This process is reduced to six steps, only five of which involve Commission Staff resources, based on Public demand for new service. All six steps could be accomplished in less than one year, probably in less than six months with a properly administered system.

Applications for upgrades and frequency changes for existing stations could be handled in the same manner with no need to limit the changes to three channels either side of the existing facility. If a change is required in one or more other assignments, the affected group would be filed on the same date as a contingent group of applications together with an exhibit evidencing the consent of all affected licensees, applicants and permittees. The group would not be subject to challenge by other applicants following the entry into the FM database. This would eliminate the current practice of filing Rulemaking petitions which are withdrawn after the initial comment period when a massive reallocation counter-proposal is filed with no realistic opportunity for comment by interested parties. Often the withdrawing party had no serious interest in the original proposal or was paid to withdraw it. Consideration should be given to limiting the number of allotment changes proposed in a single proceeding to a reasonable number such as five applications.

The above listed “demand and interference based” allotment system should be applied equally to both the AM and FM services. With the proposed system no “Filing Windows” will be required for any purpose. The free enterprise system can operate without artificial constraints. Filing windows create artificial delays in the provision of new or improved service and needlessly interfere with the financial planning necessary to provide good service to the public by needlessly draining the financial resources which would otherwise be applied to construction and operation of the proposed station. A demand based service will provide the most efficient allocation system possible by its very nature. The present system of waiving a red flag in the face of a bull leads to highly speculative filing of applications by those not familiar with the business of broadcasting. This does not well serve the Public Interest in the long run due to inadequate programming and service to the public.

CHANGES IN CITY OF LICENSE

We agree with the proposal to permit changes in the City of License by minor change. However, we believe that protections should be in place to honor the spirit and the letter of Section 307(b) of the Act. The Commission should look carefully at removal of the last local service to a community. We suggest that evidence of sufficient real Public Notice in the form of legal notice in the nearest newspaper of record, backed up by computer files, perhaps MP-3 files or some successor, announcing the proposed change on the affected facility over a period of days in all day parts be made a part of the formal record of the application so the interested public is adequately advised of the proposal and of its rights and means of participation. Absent significant and serious local objection and with a convincing showing of conformance with the requirements of Section 307(b), the application should be approved.

We believe filings such as a change in the City of License should be on a demand basis and not subject to filing windows of any kind.

THE MATTER OF EXISTING ALLOTMENTS IN THE TABLE OF ASSIGNMENTS

The Table of Allotments contains a large number of non-viable allotments made to very small communities which cannot reasonably be expected to generate sufficient revenue to pay the Fees, construct the facility and operate it in a profitable manner. These allotments and all other unused allotments should be made subject to one final Auction and those unapplied for and those not constructed by the expiration of the resulting construction permit should be eliminated from the FM Database. The Table of Allotments would cease to exist following adoption of the above proposal and the final Auction. This would eliminate the filing of Petitions for Rulemaking for non-viable markets by the few misguided souls who currently engage in this practice with no intention

of ever applying for the facilities proposed or constructing them. Those who are serious about constructing a new facility will put at risk, up front, the financial resources to obtain the required construction permit. This, by its very nature, will eliminate most, if not all, of the specious filings for new allotments.

The mere fact that a small number of previously auctioned channels failed to receive a bid should not mislead the Staff and Commission into believing that all allotments are inherently valuable. Many of the allotments were purchased with the idea of relocating them or for use as "trading fodder" for other markets. It is likely that a large percentage of the weaker allotments will not be constructed. They should not be re-auctioned; they should be purged upon expiration of the underlying permit. If there is a true demand, a party or entity can follow the above listed procedure and apply for a new construction permit.

At some point in time, we believe the Commission must recognize the fact that our system of Broadcasting is, and always has been, a profit driven business. All local and national programming, both commercial and Public Service, is made possible by the revenues and profits generated by the individuals and corporate entities which apply for and operate the radio stations, both AM and FM, which have served and continue to serve this country. It is important that short term pressure groups and political considerations not interfere with this business, lest the entire system be driven to ruin.

Respectfully submitted,

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